

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDWARD JOSEPH McNATT,	)	
	)	
Petitioner	)	
	)	
v.	)	C. A. No. 05-124 Erie
	)	
JUDGE OLIVER LOBAUGH, <u>et al.</u> ,	)	
	)	
Respondents.	)	

**PETITIONER, EDWARD JOSEPH McNATT'S, OBJECTIONS TO  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

AND NOW, comes the petitioner, Edward Joseph McNatt, by his attorney, Thomas W. Patton, Assistant Federal Public Defender, and files his objections to the Magistrate Judge's Report and Recommendation and Request for Evidentiary Hearing:

Judge Baxter's Report and Recommendation (R and R) recommends that Edward's habeas petition be dismissed for failure to exhaust. Judge Baxter's R and R is based upon the fact that, at the time it issued, Edward had a PCRA petition pending before the Superior Court which included at least some of the claims raised in his habeas petition. (R and R p. 7) This is no longer the case.

On November 2, 2006, the Superior Court reversed the dismissal of Edward's PCRA petition and remanded the case to Venango County for consideration of whether the PCRA had been timely filed. A copy of the Superior Court's opinion is attached as Petitioner's Exhibit A.<sup>1</sup>

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<sup>1</sup>Judge Baxter's R and R states in footnote four that neither party had informed her as to whether the appeal was still pending. Edward must respectfully disagree. Petitioner's counsel did inform Judge Baxter, albeit informally, that the Superior Court had reversed the dismissal of the PCRA petition. At the time of this conversation, counsel had not had an opportunity to read

After Edward's case was remanded to Venango County, Edward filed a motion to dismiss his PCRA petition. On January 26, 2006, Judge Lobaugh granted the motion and dismissed Edward's PCRA petition. A copy of Judge Lobaugh's order is attached as Petitioner's Exhibit B. Since the PCRA petition has been dismissed, and Edward cannot raise his claims in a second or subsequent PCRA petition, 42 Pa.C.S.A. § 9545(b), he has exhausted his state court remedies. 28 U.S.C. § 2254(c). Accordingly, this Court may now address the merits of his habeas petition. This Court should remand the case to Judge Baxter for consideration of the merits of the petition.

Respectfully submitted,

/s/ Thomas W. Patton  
Thomas W. Patton  
Assistant Federal Public Defender  
PA I.D. No. 88653

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the Superior Court's opinion so did not provide any more detail.